

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i) CRM No.M-42716 of 2018 (O&M)

Kanwarjit Singh Sandhu

...Petitioner

VERSUS

State of Punjab and others

...Respondents

(ii) CRM No.M-42740 of 2018 (O&M)

Kanwarjit Singh Sandhu

...Petitioner

VERSUS

State of Punjab and others

...Respondents

Date of Decision: September 27, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Ahluwalia, Advocate
for the petitioner.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as point
for determination in both the case is the same.

Petitioner has filed CRM No.M-42716 of 2018 under Section
482 Cr.P.C. against State of Punjab and other respondents for setting aside
impugned order dated 30.08.2018 passed by learned Special Judge,
Ludhiana in case FIR No.5 dated 23.03.2007 registered at Police Station

Vigilance Bureau, Ludhiana, under Sections 409, 420, 467, 468, 471, 120-B IPC and Sections 7, 13(1) (c) and (d), 13(2) and 14 of the Prevention of Corruption Act, whereby the application moved on behalf of the petitioner, seeking, *inter alia*, to participate and be heard at that time of consideration of cancellation report, has been dismissed.

CRM No.M-42740 of 2018 has been filed under Section 407 read with Section 482 Cr.P.C. for transfer of the trial in the above-said FIR, outside State of Punjab, to State of Haryana or U.T. Chandigarh.

From the record, I find that the application moved by the petitioner before the trial Court was dismissed by learned Special Judge, Ludhiana, vide impugned order dated 30.08.2018. At the time of arguments, learned counsel for the petitioner argued that earlier present petitioner had conducted investigation and he was Investigating Officer in the case against private respondents in which present Chief Minister, Punjab is also a party. Learned counsel for the petitioner contended that now under the pressure of the authorities, cancellation report has been filed wrongly before the Court. He next argued that the Public Prosecutor is under the pressure of the government and even, Director, Prosecution used to attend the proceedings and fair trial is not possible. For fair trial, free Public Prosecutor must be there for conducting the proceedings before the trial Court as present Public Prosecutor is not assisting the Court properly. Learned counsel for the petitioner also stated that the present petitioner being the complainant in the present case has every right of being heard in this case before passing any order on the cancellation report and for providing copy of cancellation report along with annexed documents and also for providing initial police

documents attached with it.

I have heard learned counsel for the petitioner and have gone through the record.

On the arguments, I find that the main point in dispute in both the petitions is regarding locus standi of the present petitioner for getting copies of challans and his right to be heard at the time of consideration by the Court on the report under Section 173 (2) Cr.P.C. against the accused and on cancellation report. It is settled law that if, after the presentation of report under Section 173(2) Cr.P.C., any further report under Section 173(8) Cr.P.C. for cancellation has been filed, then, it is the duty of the trial Court to consider both the reports and then to reach to the conclusion on the basis of documents attached with the same. The main point in both these cases is whether the Investigating Officer of the case can be heard by the Court and copies of the reports can be provided to him or whether he can be held as complainant in this case or party to the case.

The settled proposition is that after registration of the FIR, the Investigating Officer is to conduct the investigation. It is incumbent upon the Investigating Officer to conduct fair, proper and impartial investigation. He cannot be treated as party to the litigation. He is supposed to collect the evidence and to impartially reach to the conclusion; whether accused in the FIR are involved in the commission of offence or are innocent. He cannot involve himself with one of the party i.e. complainant or accused. If this is permitted, then, fair, proper and impartial investigation cannot be expected from the Investigating Officer. In the present case, the Investigating Officer, as per the arguments, addressing himself as complainant. If he is a party in the case as complainant, then he should not have investigated the

case. It is also settled law that Investigating Officer is to act independently and to reach to the conclusion independently after collecting the evidence regarding involvement in the crime or innocence of the accused. If the Investigating Officer is treating himself as complainant, then it will be taken as he is biased against the accused and impartial investigation is not possible from him.

Learned counsel for the petitioner cited judgments passed by the Hon'ble Supreme Court in *Bhagwant Singh vs. Commissioner of Police, AIR 1985 (SC) 1285*, *Union Public Service Commission vs. S. Papaiah, 1997 AIR (SC) 3876*, *Jakia Nasim vs. State of Gujarat, 2012 AIR (SC) 243*, *Sanjay Vats vs. Jawaharlal Vats, 2008 AIR (SC) 207*, *Minu Kumar vs. State of Bihar, 2006 AIR (SC) 1937*, *Shiv Kumar vs. Hukam Chand, 1999(7) SCC 467*, *Himanshu Singh Sabharwal vs. State of M.P. & Others, 2008 AIR (SC) 1943*, *Jayendra Saraswati vs. State of Tamil Nadu, 2008 AIR (SC) 2997*, *Satish Jaggi vs. State of Chhattisgarh & Others, 2007 (3) SCC 62*, *G.X. Francis & Others vs. Banke Bihari Singh & Another, 1958 AIR (SC) 309* and *K. Anbazhagan vs. The Superintendent of Police, 2004 AIR (SC) 524*. I have gone through all the above-cited judgments. In none of the judgments, it is held by Hon'ble Supreme Court that Investigating Officer can be a party to the litigation. When report under Section 173(2) Cr.P.C. has been filed, investigation comes to end and thereafter, Investigating Officer has no role except for further investigation under Section 173(8) Cr.P.C. It is for the trial Court to take cognizance or not. Otherwise also, if the present petitioner is to be heard being Investigating Officer in the case, then the Court has also to hear

173(8) Cr.P.C. later on, which is not the intention of the law that Investigating Officers should come to the Court, to contest against each other.

As already discussed, it is for the Court, from the documents placed on record, to look into that whether cancellation report is to be accepted or cognizance is to be taken on the report under Section 173(2) Cr.P.C. The Public Prosecutor is only to assist the Court. Even if, Director, Prosecution appears in the Court, in no way, it can be inferred that he can influence the decision of the Court in any way. It is admitted at the time of arguments that petitioner has no grievance against the court. The only point is that Public Prosecutor is not assisting the Court properly.

From the record, I further find that trial Court has not passed any order, at this stage, accepting the cancellation report or taking cognizance on the report under Section 173(2) Cr.P.C. Then in that situation, at this stage, it cannot be presumed that Public Prosecutor is not assisting the Court properly. As already discussed, present petitioner has no right to be heard in the case at the time of arguments for considering both the reports for the purpose of framing of the charge or discharge of accused etc.

I have gone through the impugned order dated 30.08.2018 passed by learned Special Judge, Ludhiana and the same cannot be held as illegal or against the law. A detailed order has been passed after relying upon the law, which is correct and the same is upheld.

As regarding second petition for transfer of the trial outside State of Punjab to State of Haryana or U.T. Chandigarh, I find that as

already discussed above, petitioner has no locus standi in this case,

therefore, he cannot file this application. Moreover, at the time of arguments, learned counsel for the petitioner admitted that petitioner has no grievance against the Court. Therefore, no ground is made out for transferring the trial.

Resultantly, finding no merit in both the petitions, the same are dismissed.

September 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No